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CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th August, 2024

No.13/2/145-HII(2)-2024/13427.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference No. **98/2018** dated **14.05.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MOHINDER SINGH S/O SH. JAI CHAND SINGH, PRESENTLY RESIDING AT H. NO. 576p, SECTOR 21, PANCHKULA.

PERMANENT ADDRESS:- VILLAGE BAGWALI, P.O. KAKARMAJRA, DISTRICT PANCHKULA. (Workman)

AND

1. M/S INFOSYS LTD., PLOT NO.1, RAJIV GANDHI, TECHNOLOGY PARK, CHANDIGARH - 160001.
2. M/S INFOSYS LTD., 44, INFOSYS AVENUE, ELECTRONIC CITY, HOSUR ROAD, BANGALORE - 560100 (INDIA) THROUGH MANAGING DIRECTOR / OCCUPIER AND MANAGER.
3. M/S PEREGRINE GUARDING SECURITY PVT. LTD., SCO NO.07, 2ND FLOOR, SECTOR 11, PANCHKULA THROUGH MANAGING DIRECTOR / OCCUPIER & MANAGER. (Management)

AWARD

1. Mohinder Singh, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).
2. Briefly stated the averments of claim statement are that workman was selected by the management of M/s Infosys Ltd., Plot No.1, Rajiv Gandhi Technology Park, Chandigarh (*here-in-after 'management No.1'*) as Security Supervisor and appointed by M/s Premier Shield Pvt. Ltd. on 23.08.2004. The workman was

(2025)

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issued employee Code No.15396 by M/s Premier Shield Pvt. Ltd., SCO No.216, Second Floor, Sector 37 Chandigarh now shifted to SCO No.198, Top Floor, Sector 7, Chandigarh. M/s Premier Shield Pvt. Ltd. deputed the workman at duty with the premises of management No.1. The workman was working continuously at the same place despite changing of contractors. The workman was covered under Provident Fund (PF) and Employees' State Insurance Corporation (ESIC) Acts. The management fixed wages ₹ 15,391/- per month. The workman worked continuously up to 18.03.2018 and performed allotted duties at the fixed time to the best of his zeal and efficiency. The workman was working under the guidance and administration of M/s Peregrine Guarding Pvt. Ltd., SCO No. 7, Sector 11, Panchkula (*here-in-after 'management No. 3'*) w.e.f. October 2017. The workman successfully performed his allotted duties as per the instructions of the management. Workman was honest and punctual towards his duties. There was no single complaint towards his job and conduct except the present situation. The workman was satisfactorily working under direct control and supervision of management No.1. The workman was being paid by management No.3 under the authorised contract of Managing Director and Manager of management No.1. It is a routine practice by the management in general that workmen were terminated without their fault but on the intervention of the Hon'ble Courts, the workmen were reinstated to their duty and therefore the case of the reinstatement has been filed to this Hon'ble Court. Few officers of company plus security agency plus ladies of security staff have played their connivance on personal terms. This group targeted to the loyal, honest employee (s) under influence of senior officials of the management. They manifested their own discipline to dominate the honest workmen. On 19.03.2018, a movement order bearing date 15.03.2018 by which the services of the workman had been transferred to ITC Kapurthala without giving any prior notice to the workman. The workman approached the concerned authorities of the management but no authority hear the legal and genuine requests of the workman and without giving any proper reasons the services of the workman were terminated. This behaviour of the management clearly shows there malafide intention in terminating the services of the workman which is not correct in the eyes of law. The workman was suddenly terminated without giving notice in an arbitrary manner by the management just to serve the purpose to put the workman unemployed. The authorities were also taking plea that the condition of notice is not mandatory and therefore no notice was served. The management has not issued any memo, charge-sheet nor conducted any inquiry in any manner before terminating the services of the workman and till date the workman has not been given duties. The workman has no fault. The workman requested the concerned officer number of times to take him back on duty, verbally and in writing but the management did not hear his genuine request. This is gross violation of principles of natural justice. The workman is facing all difficulties of unemployed person including starvation to the dependents which is beyond control of the workman without any fault. The management has not offered notice pay and compensation to the workman according the pre-condition of Section 25F of the ID Act. The workman had not refused the work but he was refused to work due to his termination of duties at the fixed point. Therefore, the refusal to work is illegal. The management has not paid or offered notice pay in lieu of notice or compensation. The job of workman continuous till date as juniors to the workman are still retained in service by the management. This is serious violation of Section 25F, 25G & 25H and other provisions of the ID Act. The illegal termination of duties is totally illegal action of the company. The survival of the workman along with his family has gone difficult. Since there is no transfer policy published by the company, all the concerned authorities are using pick & throw policy to transfer the workman at distant place. The juniors to the workman are still having jobs at the same place but the workman has been transferred to distant place to put in harassment. The workman worked under the direct control & supervision of management No.1 and during the entire service the concerned contractor never came at work except to pay the salary. The contractor was only show off to hoodwink the law. Being principal employer and contractor has aim to reduce the legal liabilities of the workman. Otherwise, there was no meaning/use of contractor. It is clear cut unfair labour practice on the part of the principal employer-management No.1. The action of the management based on the policy of hire & fire is colorable exercise of power. The termination of service of the workman has badly disturbed him and his family. The

management has imposed the starvation and difficulties by the illegal termination of workman from service. The workman has been served an illegal movement order dated 15.03.2018. The management pushed the workman in deep problem of starvation due to refusal to work and put him unemployed. The movement order dated 15.03.2018 issued by management No.3 wherein the workman has been directed to report to ITC Kapurthala, Punjab on 20.03.2018, is prima-facie illegal act against the workman. However, demand notice dated 01.04.2018 was served upon management No.1 & 3 which has been considered by the Assistant Labour Commissioner-cum-Conciliation Officer, U.T. Chandigarh and the judicious decisions in the matter were conveyed to all the concerned vide Memo No.2558 dated 15.06.2018. The workman was not paid the DC Rate pay from the year of employment up to the date of refusal of duty. Therefore, the arrears of pay may be summoned from the principal employer as all the records from the time of employment till the termination of the duties are with the principal employer or with the contractor concerned. The management knowingly and intentionally misused the rights and powers to conceal the true facts from this court and for their wrong and illegal acts which goes against the workman. Prayer is made that the movement order may be set aside being illegal, unjustified, malafide and in violation of all other provisions of the ID Act. The workman may be reinstated with full back wages along with continuity of service at Chandigarh with immediate effect.

3. On notice, management No.1 & 2 contested the claim statement by filing joint written statement on 05.12.2018 wherein preliminary submissions are made to the effect that the claim petition is misconceived and gross abuse of the judicial process. The facts of the case have not been brought up by the complainant (*here-in-after 'workman'*) properly. In fact, Infosys Limited is a company engaged in the business of providing information technology services. It has engaged the services of independent licensed contractor to carry out the incidental works at the relevant areas. The management No.1 & 2 has entered into agreements with the following entities for providing security services at the business establishment of the company at Chandigarh:-

- a) Peregrine Guarding Pvt. Ltd.
- b) Terrier Security Services Pvt. Ltd.

The Peregrine Guarding Pvt. Ltd. one entities of the answering management, entered into a contract dated 12.03.2018 for providing security services. It was valid from 01.04.2018 to 30.06.2018. Thereafter, vide letter dated 27.06.2018, it was extended from 01.07.2018 to 31.03.2019. The workman was appointed by the Peregrine Guarding Pvt. Ltd. - management No.3. The wages and other statutory contributions of the workman were made by the management No.3. The right to grant leave, transfer and dismiss was with management No.3 alone. As the contract dated 12.03.2018 makes it clear, it was obligation of management No.3 to disburse wages to its employees including the workman and pay the ESI and PF contributions. There was no control & supervision exercised by management No.1 & 2 on the employees of management No.3. The workman has also not provided any evidence to prove that he was employee of management No.1 & 2, other than making bald and vague assertion to this effect. The workman was employed as Supervisor by the management No.3 as informed to the answering management. The management No.1 & 2 had no role to play in his appointment. The workman was employed in a supervisory capacity and drawing wages exceeding ₹ 10,000/- per mensem as informed to the management. The workman had 30-40 Security Guards reporting to him. His functions included supervising the deployment and work of Security Guards deployed by the management No.3 on the premises of the answering management. Therefore, the workman was not a 'workman' under the ID Act. The workman's dispute, if any, can only be qua his employer i.e. management No.3. The workman should contact his employer -management No.3 and not the management No. 1 & 2. One of the ingredients to constitute industrial dispute is the relationship of employer and workman. In the absence of employer & workman relationship between the management No.1 & 2 and workman, there cannot be any industrial dispute. When there is no employer and workman relationship between the management No.1 & 2 and the workman

engaged by management No.3, the question of making the management No.1 & 2 as a party is not legal, fair, proper and justified. On this ground alone, the workman's claim statement qua the management No.1 & 2 deserves to be dismissed. The claim statement does not qualify to be an industrial dispute under Section 2(k) or under Section 2A of the ID Act. As per Section 2A of the ID Act, an individual dispute can be an industrial dispute only when the dispute arises out of the following limited grounds:-

Discharge, dismissal, retrenchment or otherwise termination of services of an individual workman.

The movement order dated 15.03.2018 is not a discharge, dismissal, retrenchment or termination order. Therefore, it is amply clear that the claim statement does not even fall within the deemed fiction created under Section 2A of the ID Act. Even otherwise, a complaint of sexual harassment was levied against the workman under the Sexual Harassment of Women at Workplaces (Prevention, Prohibition & Redressal) Act, 2013 (*here-in-after 'Act 2013'*). A joint internal committee was constituted comprising of representatives of management No.3 and Terrier Security (of which Ladies Security Guard had filed complaint under the Act 2013 against the workman-employee). The committee gave its findings wherein it was recommended that disciplinary action be taken against the workman. It was pursuant to the said committee report that workman's employer - management No.3 issued movement order dated 15.03.2018. The answering management has been informed that till date, the workman has not complied with the aforesaid movement / transfer order. The answering management has also been informed that contrary to what is being claimed by the workman, he has not been terminated till date. This is further proven by the fact that workman has not placed on record any termination letter. Therefore, the present claim statement deserves to be dismissed at the outset as first, the workman is not an employee of management No.1 & 2 and second, even on merits, the workman has no case as contrary to what he is claiming, he was not terminated but merely transferred vide order dated 15.03.2018 which he blatantly refused to obey.

4. Further in para-wise reply it is stated that it is wrong that the workman was selected by management No.1 & 2. The averment that the workman performed allotted duties at the fix time to the best of his zeal and efficiency is denied. The workman was charged with the act of sexual harassment under Act 2013. The workman's averment that he was working under the guidance and administration of management No.3 w.e.f. October, 2017 is truthful and a matter of record and is therefore, a clear admission that the workman was under the control and management of management No.3. The workman at the time of present dispute was under the employment of management No.3. The averment that there was no single complaint towards his job and conduct except the present situation is denied. Two complaints of acts of sexual harassment have filed against the workman under the Act 2013. Since, there was a complaint of sexual harassment against the workman leading to disciplinary action, thus, it is evident that the workman was not performing his duties satisfactorily. It is denied as wrong that the workman was under the direct control & supervision of management No.1 & 2. The burden of proof in establishing this is on the workman as per the judgment of Hon'ble Supreme Court in *Workmen of Nilgiri Coop. Mktg. Soc. Ltd. Versus State of Tamil Nadu* reported in 2004(3) SCC 514 which was followed by the Hon'ble High Court of Punjab & Haryana in *Basant Lal Versus State of Punjab & Others* reported in 2007(7) S.C.T. 726. Further similar stand is taken as taken in the preliminary submissions. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed with exemplary costs throughout.

5. Management No.3 contested the claim statement by filing separate written statement on 07.05.2019 wherein preliminary objections are taken on the ground that the claim statement is based on false and frivolous facts. In fact, it is a concocted story which is beyond the truth. The claimant (*here-in-after 'workman'*) has

not approached the Court with clean hands. The workman has suppressed the material facts and information from this Court. The workman was on the rolls of management No.3, who is one of the contractor of management No.1 & 2 for the purpose of providing the security services under the agreement between management No.1 & 2 and management No.3. The workman has joined the services of management No.3 on 01.10.2017 in the capacity of Security Supervisor and deployed at the premises of management No.1 & 2. The workman does not fall under the category of 'workman' as defined in Section 2(s) of the ID Act. The workman was working in a supervisory and managerial capacity with the management No.3. The workman was very careless and always prefer to sit idle, gossiping with others, not letting the other staff to perform the assigned works, always trying in findings faults in the assigned work and always trying to avoid duties on one or the other false pretext with unnecessary arguments and quarreling with others. Management No.3 was repeatedly receiving complaints with regard to the acts of misbehaviour, misconduct, unnecessary arguments and using un-parliamentary languages with the officers of the management No.1 & 2, as a result of these bad habits, the workman had been warned by his reporting Managers on various occasions but the workman did not change his habits or improve his behaviour. Besides being behaviour issues, management No.3 received a complaint of sexual harassment against the workman from a female employee Ms. Mamta Rani (*here-in-after 'victim'*). A detailed investigation has been done as per the process and the sexual harassment policy of the managements. The victim appeared before the committee and got her statement recorded. The investigation initiated on 06.02.2018 was concluded on 27.02.2018 in which 6 witnesses were interviewed and examined by the committee in which the charges are proved. Though the misconduct at the part of workman was of gross and serious in nature that was duly proved in the investigation / inquiry, attracts the maximum punishment of termination, however, taking a lenient view the workman was transferred to ITC, Kapurthala vide movement order dated 15.03.2018 but it was the workman who refused to report for the duties. The workman was further informed but at point he stopped taking calls. Thereafter, again fresh movement order dated 13.04.2018 was issued and the workman was directed to report for the duties at Torrent Pharma at Zirakpur but the workman refused to report for the duty. The workman was the Security Personnel i.e. a job of very responsibility, a person needs to be very careful and vigilant all the time during duty hours. The workman was deployed on the site of management No.2 i.e. IT company of international repute, a place where carelessness is not at all afforded or tolerable. In such a place if a person having negligent attitude or casual approach in duties may cause serious repercussions. Therefore, on various complaints of the workman, the management No.3 had no option but to shift him to some other unit but he never reported for the duties thereafter. The management No.3 has never terminated the services of the workman. In fact, the workman has willfully and deliberately abandoned his employment with management No.3 by absenting himself and not reporting for the duties. The workman lastly attended the duty on 18.03.2018 and thereafter absented himself from duty in an un-authorised manner without any information to the management No.3. The management No.3 requested that this Court may issue direction to the workman to report to the office of management No.3 on any working day so that he may be assigned duties in some other unit being served by management No.3 in Chandigarh or any other nearby locality where vacancy exists. It is further submitted that when the matter was under conciliation with Labour Authorities, the workman was categorically asked to join / report for duties, however, the workman outrightly refused the proposal of the management No.3 and further failed to report for the duties willingly and later preferred litigation. Not only this, on the initial stage of this case, the workman in person was against advised to come and join the service but he never turned up for duties. The workman has taken all his duties that is sum of ₹ 13,542/- which has been deposited in his bank account but later workman refused to sign the full & final settlement. The workman is gainfully employed elsewhere. Therefore, only for this reason the workman did not report for the duties despite due directions of management No.3 issued twice. In conciliation proceedings, the workman was again offered duties. When both the parties appeared before this Court in recent past, the workman was again offered duties but he did not come forward. The issuance of two movement orders is evident. Even at this stage, management No.3 is ready to take him back on the services

on the same terms & conditions as per availability in any other unit / client of the answering management. Besides, this Court has no jurisdiction to adjudicate the present claim. The jurisdiction to adjudicate the present claim lies with the CGIT only. There is no dispute much less industrial dispute between the workman and the management No.3 as defined under the ID Act. There is no cause of action in favour of the workman for raising the present industrial dispute as the answering management has never terminated the services of the workman. In-fact the workman has willfully and deliberately abandoned his employment with the answering management by absenting himself and not reporting for the duties. Even at this stage, like earlier, the answering management is again ready to take the workman on duty. The claim statement has no iota of truth. The workman has filed same stereo type printed material just to extract money illegally from the answering management. The workman by his own acts & conducts is not entitled for any relief from this Court. The present claim statement is vague and self-contradictory. The claim statement is devoid of merits. The workman has filed false and frivolous claim just to harass the management No.3 and to get undue advantage which is gross abuse of process of law.

6. Further in para wise reply it is stated that the workman joined the services of management No.3 on 01.10.2017 and worked till 18.03.2018. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as false, frivolous, misconceived and ill-conceived except para 8 & 9 of claim statement which are replied being matter of record. Prayer is made that the claim statement may be rejected with heavy cost.

7. Replication not filed. From the pleadings of the parties, following issues were framed vide order dated 17.09.2019 :-

1. Whether the services of the workman were terminated illegally by the management, if so, to what effect and to what relief he is entitled to, if any ? OPW
2. Whether there is no employer-employee relationship between management No.1 & 2 and the workman ? OPM-1 & 2
3. Whether this Court has no territorial jurisdiction to entertain and try the present reference ? OPM-3
4. Relief.

8. In evidence, workman Mohinder Singh examined himself as AW1 and tendered his affidavit Exhibit 'AW1/A' along with photocopy of Certificate of Excellence Award vide **Exhibit 'W1'**.

9. The workman examined AW2 Sukhjeet Singh - Clerk, O/o Assistant Labour Commissioner, U.T. Chandigarh along with documents Exhibit 'W2' to Exhibit 'W4'.

Exhibit 'W2' is authority letter dated 15.11.2022 issued in favour of Sukhjeet Singh by Assistant Labour Commissioner.

Exhibit 'W3' is copy of failure report Memo No.2558 dated 15.06.2018.

Exhibit 'W4' is copy of complete file consisting of 2 pages of conciliation proceedings dated 10.04.2018 before the Assistant Labour Commissioner, Chandigarh in the matter of Mohinder Singh Vs M/s Infosys Ltd.

10. On 18.01.2023 Learned Representative for the workman closed evidence on behalf of the workman.

11. On the other hand, management No.3 examined MW1 Mukesh Arora - Manager Compliance and authorised signatory of management No.3, who tendered into evidence his sworn in affidavit vide Exhibit 'MW1/A' along with self-attested copies of documents Exhibit 'MW1/1' to Exhibit 'MW1/8' and Mark 'X' & Mark 'Y'.

Exhibit 'MW1/1' is appointment letter dated 01.10.2017.

Exhibit 'MW1/2' is sexual harassment inquiry report dated 06.02.2018 along with statements.

Exhibit 'MW1/3' is movement order dated 15.03.2018.

Exhibit 'MW1/4' is movement order dated 28.03.2018.

Exhibit 'MW1/5' is 2nd movement order dated 28.03.2018 sent through registered post.

Exhibit 'MW1/5-A' is postal receipt dated 02.04.2018.

Exhibit 'MW1/6' is cheque No.156765 dated 11.04.2018 drawn on ICICI Bank.

Exhibit 'MW1/7' is counter foil of deposit slip dated 24.04.2018 of IndusInd Bank, Branch Panchkula.

Exhibit 'MW1/8' is statement of account for the period w.e.f. 01.05.2018 to 03.05.2018 of IndusInd Bank incorporating relevant entry of ₹ 33,542/- against dated 03.05.2018

Mark 'X' is absconding notice dated Nil.

Mark 'Y' is email dated 15.03.2018.

(Original of documents except Exhibit 'MW1/6' and Exhibit 'MW1/8' seen & returned) (Documents objected to on the ground of admissibility on account of late production. Objection kept open to be decided at the time of arguments).

12. On 05.03.2024 Learned Representative for management No.3 closed oral evidence. On 25.04.2024 Learned Representative for management No.3 tendered authority letter dated Nil of General Manager, Legal Tenon Facility Management India Pvt. Ltd. along with minutes of meeting of the Board of Directors of Peregrine Guarding Pvt. Ltd. held on 08.03.2022 vide Exhibit 'MW1/9' and closed documentary evidence on behalf of management No.3.

13. Management No.1 & 2 examined MW2 Puneet Randhawa - Senior Regional Head, Facilities, Infosys, Chandigarh, who tendered his affidavit Exhibit 'MW2/A' along with copies of documents Exhibit 'MW2/1' & Exhibit 'MW2/2'.

Exhibit 'MW2/1' is contract dated 12.03.2019 between Peregrine Guarding Pvt. Ltd. and Infosys.

Exhibit 'MW2/2' is letter dated 27.06.2018.

14. On 03.05.2024 Learned Representative for management No.1 & 2 closed evidence.

15. I have heard the arguments of Learned Representatives for the parties and have perused the judicial file. My issue-wise findings are as below :-

Issues No. 1 & 2 :

16. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

17. Onus to prove issue No.1 is on the workman and onus to prove issue No.2 is on the management No.1 & 2.

18. In support of the claim statement, workman Mohinder Singh examined himself as AW1 and vide his affidavit Exhibit 'AW1/A' deposed the averments of claim statement in toto, which are not reproduced here for the sake of brevity. AW1 supported his oral version with Exhibit 'W1'.

19. Workman examined AW2 Sukhjeet Singh - Clerk, O/o Assistant Labour Commissioner (ALC), Chandigarh, who deposed that he has brought the summoned record. The authority letter dated 15.11.2022 issued in his favour by Assistant Labour Commissioner is Exhibit 'W2'; copy of failure report Memo No. 2558 dated 15.06.2018 is Exhibit 'W3' and copy of complete file consisting of 2 pages of conciliation proceedings dated 10.04.2018 before the Assistant Labour Commissioner, Chandigarh in the matter of Mohinder Singh Vs M/s Infosys Ltd. is Exhibit 'W4'. The copies are true and correct according to the original office record.

20. On the other hand, managements No.3 examined MW1 Mukesh Arora - Manager Compliance and authorised signatory of management No.3. It is pertinent to mention here that vide order dated 03.05.2024 of this Court MW1 is allowed to be read as authorised signatory of management No.3 instead of management No.2. MW1 in his affidavit Exhibit 'MW1/A' deposed the entire contents of the written statement filed by management No.3, which are not reproduced here to avoid repetition. MW1 supported his oral version with documents Exhibit 'MW1/1' to Exhibit 'MW1/8'. Learned Representative for management No.3 referred the extract of resolution passed in the meeting of the Board of Directors of Peregrine Guarding Pvt. Ltd. held on 06.03.2022 at corporate office Gurugram, Haryana accompanied with authority letter issued by General Manager, Legal, Tenon Facility Management India Pvt. Ltd. as well as authorised representative of Peregrine Guarding Pvt. Ltd., Tenon Group vide Exhibit 'MW1/9'.

21. Managements No.1 & 2 examined MW2 Puneet Randhawa - Senior Regional Head, Facilities, Infosys, Chandigarh vide his affidavit Exhibit 'MW2/A' deposed the contents of the joint written statement of management No.1 & 2 in toto. MW2 supported his oral version with documents Exhibit 'MW2/1' and Exhibit 'MW2/2'.

22. Heard Learned Representative for the parties on the objections raised to the admissibility of documents Exhibit 'MW1/6' and Exhibit 'MW1/8' on the ground of late production. Both these documents were tendered by MW1 in his examination-in-chief. Learned Representative for workman availed the full opportunity to cross-examine MW1 and conducted his cross-examination at length. No prejudice is shown to have been caused to the interest of the workman by producing the said documents by the management / MW1 during evidence. Thus, the objection to the admissibility of documents Exhibit 'MW1/6' and Exhibit 'MW1/8' not sustainable.

23. From the oral as well as documentary evidence led by the parties and pleadings of the parties, it has come out that the workman Mohinder Singh has alleged that he was selected by management No.1 i.e. M/s Infosys Limited, plot No.1, Rajiv Gandhi Technology Park, Chandigarh as Security Supervisor and appointed

by M/s Premier Shield Pvt. Ltd. on 23.08.2004. M/s Premier Shield Pvt. Ltd. deputed the workman with the premises of M/s Infosys, Chandigarh - management No.1 where the workman remained in continuous service despite changing of contractors. It is further alleged by the workman that he was working under the guidance and administration of M/s Peregrine Guarding Pvt. Ltd. - management No.3 w.e.f. October 2017. He was working under the direct control & supervision of management No.1 and he was paid by management No.3 under the authorised contract of Managing Director and Manager of Infosys Limited.

24. Learned Representative for the workman argued that initially the workman was appointed by contractor M/s Premier Shield Pvt. Ltd. as Security Supervisor and deployed to work with management No.1. The contractor of the workman changed from time to time but w.e.f. October 2017 up to termination of services w.e.f. 18.03.2018 the workman is working under the administration of management No.3. It is vehemently argued by Learned Representative for the workman that though the workman was paid salary by management No.3 but the workman was working under the direct control & supervision of managements No.1 & 2, which would prove that the workman was employee of managements No.1 & 2.

25. On the other hand, Learned Representative for management No.1 & 2 argued that the management No.1 & 2 has entered into agreements for providing security services at the business establishment of the company at Chandigarh with Peregrine Guarding Pvt. Ltd. - management No.3 and Terrier Security Services Pvt. Ltd. The service agreement of the managements No.1 & 2 i.e. Infosys Ltd. (company or Infosys) with management No.3 for deployment of manpower including Security Supervisors for the period w.e.f. 01.04.2018 to June 30, 2018 is Exhibit 'MW2/1' and extension of said service agreement for further period of 9 months w.e.f. July 1, 2018 to March 12, 2018 is Exhibit 'MW2/2'. Learned Representative for management No.1 & 2 argued that documents Exhibit 'MW2/1' and Exhibit 'MW2/2' would prove that Infosys has outsourced the workman from contractor - management No.3 for doing the job of Security Supervisor on the basis of valid agreement of service Exhibit 'MW2/1' extended vide letter Exhibit 'MW2/2'. It is argued by Learned Representative for management No.1 & 2 that since the workman was an outsource employee appointed by the contractor, his salary was paid by the contractor, his service conditions including leave, were governed by the contractor, thus, the workman was the direct employee of management No.3 and there is no relationship of employer and employee between management No.1 & 2 (Infosys) and the workman.

26. Learned Representative for management No.3 argued that workman was employee of management No.3, who was deputed to work with Infosys in their office at Chandigarh - management No.1.

27. To my opinion, in order to establish the relationship of an employer-employee it is required to be considered as to who has appointed the employee, who pays salary / remuneration, who has the authority to dismiss or to take disciplinary action, continuity of service and extent of control & supervision. In the present case, it is own plea of the workman that initially he was appointed by M/s Premier Shield Pvt. Ltd. - contractor on 23.08.2004 as Security Supervisor and w.e.f. October 2017 he is working under M/s Peregrine Guarding Pvt. Ltd. - management No.3. His services were covered under the Provident Fund and Employees' State Insurance scheme. AW1 (workman) when put to cross-examination by management No.1 & 2 - Infosys stated that he was working as Security Guard in M/s Premier Shield Pvt. Ltd. from 2004 to March 2018. AW1 admitted as correct that on 18.03.2018 he was an employee of M/s Peregrine Guarding Security Pvt. Ltd. i.e. management No.3. AW1 further stated that management No.3 used to give him salary which was given by M/s Infosys Ltd. to management No.3. AW1 admitted as correct that he was not given appointment letter or employment contract by M/s Infosys Ltd. AW1 admitted as correct that providing security services is not the business of M/s Infosys Ltd. AW1 admitted as correct that the transfer order from IT Park to ITC, Kapurthala were issued by management No.3 on 18.03.2018. MW1 (witness of management No.3 - contractor) when put to cross-examination by the workman stated that the workman was issued movement orders dated

15.03.2018&28.03.2018 Exhibit 'MW1/3' &Exhibit 'MW1/4' respectively. From the aforesaid version of AW1 and MW1 it is sufficiently proved into evidence that the workman was initially appointed by contractor M/s Premier Shield Pvt. Ltd. in the year 2004 and at the time of alleged termination of services the workman was working under his employer M/s Peregrine Guarding Pvt. Ltd. - management No.3 / contractor. The workman was paid salary by the contractor. The movement orders / transfer order dated 15.03.2018 and 28.03.2018 were issued to the workman by the management No.3 - contractor, which would prove that services of the workman were under the control & supervision of management No.3. The workman from the date of his appointment i.e. 23.08.2004 till alleged termination of his services w.e.f. 19.03.2018 remained deployed with Infosys - management No.1 on outsource basis as contractual worker. During the tenure of service from 23.08.2004 to 19.03.2018, the workman worked as outsource employee with management No.1 under various contractors and last w.e.f. 01.10.2017 under the contractor M/s Peregrine Guarding Pvt. Ltd. - management No.3. From appointment letter Exhibit 'MW1/1' it is duly proved on record that management No.3 issued appointment letter to the workman on 01.10.2017 and the term of employment of the workman under the management No.3 - contractor started w.e.f. 01.10.2017. MW1 when put to cross-examination by the workman stated that the company is not ready to reinstate the workman with continuity of service and full back wages. The aforesaid suggestion by the workman would led to the inference that the workman is seeking reinstatement from his employer i.e. management No.3 - contractor. From the discussion made above, it can be inferred that the workman was direct employee of the contractor w.e.f. 23.08.2004 to 18.03.2018 including his employment under the contractor - management No.3 w.e.f. 01.10.2017 up to 18.03.2018. Therefore, there is no relationship of employer & employee between Infosys (management No.1 & 2) and the workman.

28. Learned Representative for the workman argued that the workman performed his duties to the complete satisfaction of the managements. For discharging duties in a given manner, the workman was awarded certificate of excellence Exhibit 'W1'. To my opinion, the certificate Exhibit 'W1' would reveal that it was awarded to the workman for his significant contribution towards the Spark Programme in 2011-12. It is not the case of the managements that up to year 2011-12 there was any complaint against the conduct of the workman.

29. As far as termination of services of the workman is concerned, Learned Representative for the workman contended that despite performance of duties in a satisfactory manner, the management No.3 allegedly issued movement order dated 15.03.2018 / Exhibit 'MW1/3' on 19.03.2018 without giving any prior notice to the workman whereby the workman was transferred to ITC Kapurthala. It is further contended by Learned Representative for the workman that the management has alleged that the explanation of the workman for non-reporting at ITC - Kapurthala was called vide show-cause letter dated 28.03.2018 / Exhibit 'MW1/4' but neither the movement order Exhibit 'MW1/3' nor the show-cause letter Exhibit 'MW1/4' was ever communicated to the workman. Learned Representative for the workman further contended that the management No.3 has alleged when the workman did not report at ITC - Kapurthala then the workman was re-transferred vide absconding notice and amended transfer order Exhibit 'MX' whereby the workman was transferred to Torrent Pharmaceuticals, Zirakpur w.e.f. 16.04.2018. Learned Representative for the workman laid much stress upon the fact that the alleged transfer order Exhibit 'MX' was never communicated to the workman, as such, there was no question of compliance thereof. It is further contended by Learned Representative for the workman that the termination of services of the workman on the basis of non-reporting at ITC - Kapurthala in compliance to movement order Exhibit 'MW1/3', non-filing of reply to show cause letter Exhibit 'MW1/4' and non-reporting at Torrent Pharmaceutical, Zirakpur in compliance to absconding notice-cum-amended transfer order Mark 'X' is illegal and unfair labour practice. To support his contention Learned Representative for the workman referred cross-examination of MW1 wherein he has stated as below :-

"The workman was issued movement orders dated 15.03.2018, 28.03.2018 / Exhibit 'MW-1/3 and Exhibit 'MW-1/4' respectively. Copy of absconding notice dated Nil and amended

transfer order is Mark 'X'. I cannot produce any document showing that letters Exhibit 'MW-1/3', Exhibit 'MW-1/4' and Mark 'X' were delivered to the workman."

30. Learned Representative for the workman contended that there is no transfer policy published by the company. The alleged movement orders are issued with the sole purpose to terminate the services of the workman.

31. On the other hand, Learned Representative for management No.1 & 2 argued that letters Exhibit 'MW1/3', Exhibit 'MW1/4' and Mark 'X' are issued by management No.3 to the workman and has no concern with management No.1 & 2.

32. Learned Representative for management No.3 argued that the management No.3 repeatedly received complaints against the workman regarding his acts of misbehaviour & misconduct, unnecessary arguments and using un-parliamentary language with the officers of management No.1 & 2, as a result of which the Reporting Managers of management No.3 warned the workman on various occasion but the workman did not change or improved his behaviour due to which the workman was transferred from office of management No.1 vide movement order dated 15.03.2018 Exhibit 'MW1/3' directing the workman to report to ITC Kapurthala (Punjab) on 20.03.2018 but the workman did not report on duty at Kapurthala. It is further argued by Learned Representative for management No.3 that non-reporting at duty at ITC - Kapurthala was against the norms of the company, thus the management No.3 issued show cause letter dated 28.03.2018 / Exhibit 'MW1/4' to the workman advising him to report to the office within 24 hours with appropriate explanation. The workman did not report to the office of management No.3 and thereafter amended movement order Mark 'X' was issued to the workman whereby he was transferred at Torrent Pharmaceutical at Zirakpur w.e.f. 16.04.2018. It is argued by Learned Representative for management No.3 that despite movement orders Exhibit 'MW1/3', show cause notice Exhibit 'MW1/4' and amended movement order Mark 'X', the workman neither reported at ITC Kapurthala nor at Torrent Pharmaceutical, Zirakpur nor given any explanation to show cause notice, which amounts to abandonment of job and not termination from service.

33. The contention raised by Learned Representative for the workman that there was no complaint against the work & conduct of the workman is devoid of merits because the workman / AW1 when put to cross-examination by management No.3 admitted as correct that one lady Guard filed a complaint of sexual harassment against him. AW1 voluntarily stated that it was false. AW1 further stated that no inquiry was conducted in the matter of alleged allegations of sexual harassment. The Lady Guard who filed a complaint against him was named Mamta Rani as told by the management. AW1 denied the suggestion as wrong that joint inquiry was conducted against him in connection with the allegations levelled by Mamta Rani. AW1 denied the suggestion as wrong that he has joined in the said inquiry. AW1 further stated that he has seen statement Mark 'R1' which is his statement bearing his signatures but the same has no concern with the complaint allegedly filed by Mamta Rani. The aforesaid version of AW1 would suggest that the statement Mark 'R1' admittedly bear the signatures of the workman. The perusal of Mark 'R1' would reveal that on dated 16.10.2017 the workman has made a statement of facts in proceedings of some complaint against him, stating therein that he has heard the audio clip played which does not contain his voice. He has not touched any lady during duty and he did not use indecent language. From the contents of Mark 'R1' it is duly established that workman has got recorded his above statement in the proceedings of a complaint lodged against him in connection with indecent activity against some lady employee. In view of the contents of Mark 'R1', which admittedly bears the signatures of the workman, it could be inferred that the workman has joined into the inquiry proceedings against him relating to his misconduct. It is not the plea of the workman that except Mamta Rani and any other female employee has filed any complaint against his misconduct. The facts & circumstances mentioned above would prove that before transferring the workman from management No.1 some sort of inquiry was

conducted against his misconduct. The contention raised by Learned Representative for workman that there is no transfer policy published by the company is devoid of merits because it is undeniable fact that the workman was appointed by management No.3 / contractor w.e.f. October 2017 vide appointment letter 01.10.2017 Exhibit 'MW1/1'. It is own plea of the workman in para 1 of the claim statement that the workman was working under the administration of M/s Peregrine Guarding Pvt. Ltd., Panchkula w.e.f. October 2017. Furthermore, as per Clause 3 of appointment letter dated 01.10.2017 / Exhibit 'MW1/1' the management No.3 / contractor (employer) is competent to transfer the workman to any other organisation during the service period where the workman has to work as per the directions and rules of that organisation. Consequently, the job of the workman was transferable. As far as communication of movement orders to the workman is concerned, workman / AW1 when put to cross-examination by management No.3 admitted as correct that after the alleged complaint of Mamta Rani, movement order was passed whereby he was transferred to ITC - Kapurthala. AW1 admitted as correct that as per the transfer order he was required to report on duty at Kapurthala on 20.03.2018. He reported for duty on 23.03.2018. AW1 voluntarily stated that he was not allowed to join duty. He went to the main gate of premises of ITC - Kapurthala and shown transfer order but the Security Guard at the gate informed him that there is no vacant post and he was not allowed to enter the premises. From the aforesaid version of AW1 it is duly established that movement order Exhibit 'MW1/3' was duly communicated by management No.3 to the workman. If for the sake of arguments, it is assumed that the movement order Exhibit 'MW1/3' was not communicated to the workman then how the workman went to Kapurthala on 23.03.2018 for reporting on duty. The explanation offered by the workman that Security Guard at the gate informed that there is no vacant post, is not acceptable because the workman himself was a Security Guard and it is well within his knowledge that a Security Guard is not supposed to have any information about the number of vacancies in the organisation. AW1 in his cross-examination stated that during his tenure of 14 years as a Security Guard he did not supply any information of vacancies of posts to anyone. Moreover, in case the workman was not allowed to join duty at Kapurthala, then workman should have given written intimation to management No.3 that he has not been allowed to join the duty at Kapurthala but no such intimation has been issued by the workman. In this regard, workman / AW1 in his cross-examination stated that he did not move any written intimation to the management that he has been disallowed to join duty at Kapurthala. The bald oral assertion of the workman that he telephonically informed to officials at Infosys Ltd., Chandigarh that he has been denied to join duty is without any corroboration, thus, not acceptable. The facts & circumstances mentioned above, would suggest that despite knowledge of movement order Exhibit 'MW1/3', no effort was made by the workman to join duty at the place of posting i.e. ITC- Kapurthala. As far as, show-cause notice Exhibit 'MW1/4' and amended transfer order Mark 'X' is concerned, these are neither put to the workman in his cross-examination nor the mode of communication of the same is proved. In the absence of communication of show cause notice Exhibit 'MW1/4' and amended transfer order Mark 'X', the absence of the workman from duty would at the most amounts to misconduct. In show-cause letter Exhibit 'MW1/4' it was specifically mentioned that the workman was advised to report to the office within 24 hours with appropriate explanation failing which it will be deemed that he has no further explanation and the management has no other option then to take a strong disciplinary action against him, which may include absconding / termination of his services in future. In the present case, on non-compliance of movement letter Exhibit 'MW1/3' and amended movement letter Mark 'X', the management did not initiate any disciplinary proceedings against the workman. The workman remained in continuous service of managements No.1 & 2 being an outsource employee under the various contractors (management No.3 being last contractor w.e.f. 1st October, 2017) from 23.08.2004 up to 18.03.2018. Thus, the workman has completed 240 days of continuous service in 12 calendar months preceding termination, as required under Section 25B of the ID Act. Once the requirement of Section 25B of the ID Act is fulfilled, the provision of Section 25F stands attracted, which imposes a prohibition against retrenchment until the conditions prescribed by that section are fulfilled. MW1 (witness of management No.3) when put to cross-examination by the workman stated that except movement

order no other notice was issued to the workman before termination of his services. MW1 further stated he does not know whether from the date of appointment i.e. 23.08.2004 to 17.03.2018 the workman was never issued any memo or charge sheet. The denial of fact for want of knowledge by MW1 is not a specific denial, thus, deemed to be admitted under the law. It is not the case of the management that before termination of services of the workman any show-cause notice was issued, any domestic inquiry was held, retrenchment compensation was paid or that prior notice was issued or notice pay was offered and paid in lieu of the notice period. It is neither pleaded nor proved by management No.3 that retrenchment compensation was paid to the workman. Consequently, the management No.3 has failed to prove the compliance of the conditions laid in Section 25F of the ID Act.

34. In view of the discussion made above, termination of service of the workman w.e.f. 18.03.2018 is illegal being violative to Section 25F of the ID Act and is hereby set aside. There is no evidence that the contract between management No.1 & 2 - Infosys and management No.3 - contractor is continuing. Consequently, keeping in view the length of service and last paid wages of ₹ 15,391/- per month, the workman is held entitled to lump sum compensation in the tune of ₹1,15,000/- to be paid by management No.3.

35. Accordingly, issue No.1 is decided in favour of the workman and against the management No.3. Issue No.2 is decided in favour of the managements No.1 & 2 and against the workman.

Issue No. 3 :

36. Onus to prove this issue is on management No.3.

37. The workman being outsource employee was deployed by the management No.3 with the office of management No.1 at Chandigarh till the termination of his services w.e.f. 18.03.2018. Thus, this Court is well within its territorial jurisdiction to try and decide the present industrial dispute.

38. Accordingly, this issue is decided against management No.3 and in favour of the workman.

Relief :

39. In the view of foregoing finding on the issue No.1 & 3 above, the present industrial dispute is allowed to the extent that the workman is held entitled to lump sum compensation of ₹ 1,15,000/- to be paid by management No.3. Management No.3 is directed to comply with the award within three months from the date of publication of the same in Government Gazette failing which the management is liable to pay interest at the rate 8% per annum on the abovesaid amount from the date of this award till its realisation. Appropriate Government be informed. Copy of this award be also sent to Learned District Judge, Chandigarh in view of Sub-section 10 of Section 11 of the Industrial Disputes (Amendment) Act, 2010 for onward transmission of the same to concerned Civil Court. File be consigned to the record room.

(Sd.) . . . ,

Dated : 14.05.2024.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152.

CHANDIGARH ADMINISTRATION
LABOUR DEPARTMENT

Notification

The 28th August, 2024

No.13/2/148-HII(2)-2024/13433.—In exercise of the Powers conferred by sub-section (i) of Section 17 of the Industrial Disputes Act, 1947 (Central Act No. 14 of 1947) read with Government of India, Ministry of Labour & Employment's Notification No. S-11025/21/2003-IR(PL) dated 28.7.2004, the undersigned hereby publish the following award bearing reference **No. 3/2023** dated **01.07.2024** delivered by the Presiding Officer, Industrial Tribunal-cum-Labour Court, UT Chandigarh between :

MS. UPMA SOOD AGED 59 YEARS, D/O LATE SH. KRISHAN GOPAL ANJUM, R/O HOUSE NO. 3540, SECTOR 46-C, CHANDIGARH (7888969050). (Workman)

AND

THE CHIEF EXECUTIVE OFFICER, PUNJAB WATER SUPPLY & SEWERAGE BOARD, PLOT NO.1B, SECTOR 27-A, CHANDIGARH. (Management)

AWARD

1. Upma Sood, workman has presented industrial dispute under Section 2A(2) of the Industrial Disputes Act, 1947 (*here-in-after in short called 'ID Act'*).

2. Briefly stated the averments of claim statement are that the workman was appointed as Clerk in Punjab Water Supply & Sewerage Board (*here-in-after 'Board'*) and joined as such on 01.06.1987. The workman was retrenched / terminated from service on 24.01.1988 without following procedure laid down under Section 25F of the ID Act as one month's notice was not given before retrenchment and no compensation was given for the completed year. As such, the workman was liable to be reinstated with effect from date of retrenchment with continuity of service and full back wages. The workman raised industrial dispute under Section 2A of the ID Act which was listed in IDR No.32 of 01.02.1990. During the pendency of the dispute, as a measure of unfair labour practice under Section 25T punishable under Section 25U of the ID Act, the management directed the workman vide letter dated 22.05.1992 to forego back wages for retrenchment. As such, the workman gave affidavit dated 22.05.1992 not to claim the back wages on her reinstatement in service with continuity of service and other consequential benefits. The workman was taken back in service as Clerk vide letter dated 27.05.1992 on dated 27.05.1992 instead of 24.01.1988 and no order of continuity in service and consequential benefits were issued. The workman gave an undertaking in the Court that workman had been taken back in service and the dispute may be decided as settled. The Hon'ble Court accordingly decided the dispute as settled on 27.05.1992. The workman was neither reinstated w.e.f. 24.01.1988 nor orders of continuity of service were issued which is violation of Section 25F as a measure of unfair labour practice under Section 25T punishable under Section 25U of the ID Act. As such, the workman demanded back wages vide her letter dated 06.04.1995 which was rejected vide order dated 19.09.1995. During this period the workman retired as Superintendent Grade - II. The workman kept on demanding back wages, continuity in service and consequential benefits and her last demand was dated 05.10.2021 thereafter the workman again approached Labour Officer-cum-Conciliation Officer through demand notice dated 22.05.2022 for conciliation. During this period her letter dated 05.10.2021 was again rejected vide letter dated 20.12.2022 on the ground that the workman had given an affidavit not to claim back wages on her reinstatement but

nothing was stated ever about continuity in service and consequential benefits. No compromise was arrived at before the Conciliation Officer as the official appearing on behalf of the management was a Senior Assistant and was not authorised to compromise the dispute. The Conciliation Officer therefore, referred the dispute for adjudication before the Labour Court vide his letter dated 06.12.2022. The workman has requested to grant the following relief :-

- i) Workman be reinstated with effect from 24.01.1988 instead of 27.05.1992.
- ii) Workman be given continuity of service w.e.f. 24.01.1988 onwards as has been given in the case of Sh. Inderjit Singh Saini, the then JDM.
- iii) Workman be given incremental benefits for the retrenchment period.
- iv) Workman's pay be re-fixed after grant of incremental benefits for the retrenchment period.
- v) Workman's services may be counted w.e.f. 31.12.1990 which was regularised w.e.f. 31.12.1990 vide letter dated 25.05.2008 for the purpose of calculation of service for payment of gratuity, DCRG and leave encashment as the workman has been subjected to huge financial loss on account of unfair labour practice committed by the management.
- vi) The workman may be given back wages for the retrenchment period as the management has failed to implement second part of the affidavit given by the workman for her reinstatement i.e. continuity in service and consequential benefits as settled in the Labour Court in IDR NO. 32 of 01.02.1992.
- vii) The workman may also be given interest on the due payment not made so far.
- viii) The management may be punished under Section 25U for indulging in unfair labour practice under Section 25T of the ID Act.
- ix) The compensation for compelling the workman for avoidable litigation.
- x) Any other relief, this Hon'ble Court may deem fit on the merits of this case.

3. On notice, management contested the claim statement by filing written statement on 20.04.2023 wherein preliminary objections are taken on the ground that the claim statement / reference is not maintainable as the State Government has not sent the reference with regard to the dispute of the petitioner (*here-in-after 'workman'*) to this Tribunal. The reference is time barred as the same has been filed after a considerable period of about 30 years since accrual of the cause of action. It is well settled law that the relief in this shape of monetary relief can only be claimed within three years from the date when the cause of action first accrued. The workman is estopped by her own conduct as she has submitted a duly sworn affidavit dated 07.04.1992 wherein she has given unconditional undertaking that she will not claim any back wages in case she is taken back in service with continuity in service. It appears from the affidavit that the workman herself affirmed not to take back wages for the period she remained under termination. The instant case is liable to be dismissed as there is huge delay and laches which have not been explained by the workman. There is no merit in the original application.

4. Further in para-wise reply, it is stated that it is a matter of record that the workman was appointed as Clerk in the Board on 28.05.1987 and her services were terminated on 24.01.1988. It is wrong to the extent that the workman was retrenched / terminated on 24.01.1988 without following the procedure laid down under Section 25F of the ID Act. Therefore, the workman was not liable to be reinstated w.e.f. the date

of retrenchment with continuity in service and full back wages. It is a matter of record that the workman raised industrial dispute under Section 2A of the ID Act bearing IDR No.32 of 01.02.1990 and that the management issued directions to the workman vide letter dated 22.05.1992 to forego back wages for reinstatement. It is a matter of record that the workman was taken back in service as Clerk vide letter dated 27.05.1992 on 27.05.1992 and there was no order of continuity in service and consequential benefits. It is a matter of record that the workman demanded back wages vide letter dated 06.04.1995 which was rejected vide letter dated 19.09.1995 and that the last demand raised by the workman was of 05.10.2021. It is also a matter of record that the workman raised demand notice dated 22.05.2022 for conciliation and during this period her letter dated 05.10.2021 was rejected vide letter dated 20.12.2022 on the ground that the workman had given an affidavit not to claim back wages on her reinstatement. Further similar stand is taken as taken in the preliminary objections. Rest of the averments of claim statement are denied as wrong and prayer is made that the claim statement may be dismissed.

5. The workman filed rejoinder wherein the contents of the written statement except admitted facts, are denied as wrong and averments of claim statement are reiterated.

6. From the pleadings of the parties following issues are framed vide order dated 07.07.2023 :-

1. Whether the termination of services of the workman is illegal ? OPW
2. If issue No.1 is proved in affirmative, whether the workman is entitled to reinstatement along with continuity of service, full back wages and all other consequential benefits, as prayed for ? OPW
3. Whether the present reference is time barred ? OPM
4. Whether the present reference is not maintainable ? OPM
5. Relief.

7. In evidence, workman Upma Sood examined herself as AW1 and tendered her affidavit Exhibit 'AW1/A' along with copies of documents i.e. Exhibit 'W1 to Exhibit W11.

Exhibit 'W1' is copy of appointment letter dated 28.05.1987.

Exhibit 'W2' is copy of office order dated 21.05.1992 issued by Managing Director, Punjab Water Supply & Sewerage Board (PWSSB), Chandigarh.

Exhibit 'W3' is copy of my affidavit-cum-declaration bearing date of attestation dated 21.05.1992.

Exhibit 'W4' is copy of my statement dated 27.05.1992 recorded by the Court in the proceedings of IDR No. 32/1990.

Exhibit 'W5' is copy of Award dated 27.05.1992 in IDR No. 32/1/2/1990 titled as M/s Uma Sood Versus Managing Director, Punjab Water Supply & Sewerage Board, Chandigarh passed by the court of Shri R. M. Gupta, Presiding Officer, Labour Court, U.T, Chandigarh, notified in the gazette of Chandigarh Administration.

Exhibit 'W6' is copy of application dated 06.04.1995 moved by Upma Sood to the Managing Director PWSSB, Chandigarh relating to the subject of seeking back wages and seniority as per the order of the Court.

Exhibit 'W7' is copy of letter dated 15.09.1995 bearing Memo No. PWSSB/95/EA(1)/42774 dated 19.05.1995 addressed from Manager Personnel & General Admin to Upma Sood.

Exhibit 'W8' is copy application dated 05.10.2021 moved by Upma Sood me to the Chief Executive Officer, PWSSB, Chandigarh seeking re-calculation of gratuity as per the orders of Court.

Exhibit 'W9' is copy letter No. PWSSB/2021/EA(1)/21397 dated 20.12.2021 addressed from Manager Personnel & General Admin to Upma Sood relating to the subject of re-fixation of pay and re-calculation of gratuity.

Exhibit 'W10' is copy office order dated 10.02.1994 passed by the Managing Director.

Exhibit 'W11' is copy relevant entry of service book in connection with office order No. PWSSB/2008/EA(1)/410 dated 08.05.2008.

8. On 21.02.2024 Learned Representative for workman closed evidence in affirmative.

9. On the other hand, management examined MW1 Ashwani Kumar - Manager, Personnel & General Administration, Punjab Water Supply & Sewerage Board, who tendered his affidavit Exhibit 'MW1/A' along with documents i.e. Exhibit 'MW1/1' to Exhibit 'MW1/3'.

Exhibit 'MW1/1' is copy of affidavit sworn by Upma Sood.

Exhibit 'MW1/2' is copy of promotion order No. PWSSB-2021/EB(1)/422 dated 25.06.2021.

Exhibit 'MW1/3' is copy of service record pertaining to service verification w.e.f. 01.06.1987 to 23.01.1988.

10. On 22.04.2024 Shri Sajjan - Representative for the management closed oral evidence. On 01.07.2024 Shri Ashish Kumar - Representative for the management closed documentary evidence.

11. I have heard arguments of Learned Representatives for the parties, gone through the written arguments filed by both the parties and perused the judicial file. My issue-wise findings are as below :-

Issue No. 1 :

12. Onus to prove this issue is on the workman.

13. In the present case, there is no dispute of termination of services of the workman. It is admitted case of the parties, the workman joined the management Board as a Clerk on 28.05.1987 and her services were terminated on 24.01.1988. Undisputedly, the workman challenged the order of termination of her services in **IDR No. 32 of 01.02.1990** titled as **Upma Sood Versus Managing Director, Punjab Water Supply & Sewerage Board, Chandigarh**. Further there is no dispute with regard to the fact that in the matter of IDR No.32 of 01.02.1990 Upma Sood got recorded her statement dated 27.05.1992 / Exhibit 'W4' before the Presiding Officer, Industrial Tribunal & Labour Court, U.T. Chandigarh. Statement dated 27.05.1992 of workman Upma Sood is reproduced as below :-

"I have joined my duties with the management on 22-5-92, as per the office order dated 22-5-92. Now I have no dispute with the management. The reference may be disposed off accordingly."

14. Undisputedly, IDR No.32 of 01.02.1990 was disposed off vide award dated 27.05.1992 passed by the Court of Shri R. M. Gupta - Presiding Officer, Labour Court, U.T. Chandigarh notified

in Gazette of Chandigarh Administration vide Exhibit 'W5'. The relevant portion of award dated 27.05.1992 / Exhibit 'W5' is reproduced as below :-

"In view of the statement of the workman, the reference is disposed off as settled. Appropriate Government be informed."

15. Since there is no termination of the services of the workman thus this issue is not pressed by Learned Representative for the workman during course of arguments.

16. Accordingly, this issue is decided against the workman being not pressed and in favour of the management.

Issues No. 2 & 4 :

17. Both these issues are taken up together being interconnected and in order to avoid repetition of discussion.

18. Onus to prove issue No.2 is on the workman and issue No.4 is on the management.

19. Under these issues Learned Representative for the workman argued that initially the services of the workman were terminated on 24.01.1988 and after filing of IDR No.32 of 01.02.1990, on the basis of the directions vide letter dated 21.05.1992 bearing endorsement dated 22.05.1992 / Exhibit 'W2' issued by the management the workman re-joined duty on 27.05.1992. Learned Representative for the workman argued that on re-joining the workman was entitled to be taken back in service w.e.f. the date of termination i.e. 24.01.1988 by giving the benefit of continuity of service.

20. On the other hand, Learned Representative for the management argued that on re-joining on 27.05.1992 workman has given unconditional undertaking in the form of an affidavit dated 07.04.1992 / Exhibit 'MW1/1' to the effect that she will not claim any back wages in case she is taken back in service with continuity in service. Learned Representative for the management argued that in view of affidavit dated 07.04.1992 / Exhibit 'MW1/1' workman is estopped from claiming reinstatement w.e.f. 24.01.1988 and from claiming back wages of the period of termination. To support his arguments Learned Representative for the management referred cross-examination of AW1 wherein she has stated that in IDR No.32/1990 she did not raise demand of monetary benefits because the management directed her to give an affidavit that she will not claim back wages. AW1 further stated that she has given conditional affidavit on the instructions of the management.

21. To my opinion, from the arguments advanced by Learned Representative for the parties it would emerge that during the pendency of proceedings of IDR No.32 /1990 the Managing Director of the management Board issued office order dated 21.05.1992 bearing endorsement dated 22.05.1992 / Exhibit 'W2' wherein the following order was passed :-

"In pursuance of Secretary to Govt., Punjab, Local Government's letter No.Spl.92/IIB III/3385, dated 7.4.1992, has given an affidavit that she will not claim any back wages if she is taken back in service with continuity in service."

Accordingly Miss Umpa Sood is hereby taken back in service of the Board as Clerk and posted in the Head Office of the Board."

This offer is subject to the decision of S.L.P. pending in the Supreme Court of India."

22. From the contents of letter Exhibit 'W2' mentioned above it is made out that the office order dated 21.05.1992 bearing endorsement dated 22.05.1992 was issued subsequent to furnishing of affidavit by the workman Upma Sood. In affidavit-cum-declaration sworn by Umpa Sood i.e. Exhibit 'W3', she has affirmed that she will not claim her back wages on her reinstatement in service with continuity of service and other consequential benefits and further affirmed and declared that the above said facts are true to the best of her knowledge and belief and nothing has been concealed thereof. From the contents of affidavit-cum-declaration / Exhibit 'W3' it is made out that applicant has relinquished the claim of back wages in case she is reinstated with continuity of service but claimed continuity of service on her reinstatement.

23. The scope of Section 2A of the ID Act is limited to the industrial dispute relating to discharge, dismissal, retrenchment or otherwise termination of services of workman. The relief of continuity of service w.e.f. 24.01.1988 and the consequential monetary benefits sought by the workman does not fall within the purview of Section 2A of the ID Act. Therefore, the present claim statement is not maintainable.

24. Accordingly, issue No.2 is decided against the workman and in favour of the management. Issue No.4 is decided in favour of the management and against the workman.

Issue No. 3 :

25. Onus to prove this issue is on the management.

26. The workman is seeking the consequential benefits from the date of termination of her services i.e. 24.01.1988 alleging that she was reinstated into service on 27.05.1992. Thus, the cause of action accrued to the workman on her reinstatement and re-joining on 27.05.1992. The present claim statement has been filed on the basis of demand notice dated Nil served upon the management on 25.05.2022 i.e. after 30 years of accrual of cause of action. The delay in filing the claim statement is not explained. Thus, the present claim statement is barred by limitation.

27. Accordingly, this issue is decided in favour of the management and against the workman.

Relief :

28. In the view of foregoing finding on the issues above, this industrial dispute is declined. Appropriate Government be informed. File be consigned to the record room.

(Sd.) . . . ,

Dated : 01.07.2024.

(JAGDEEP KAUR VIRK)
PRESIDING OFFICER,
Industrial Tribunal & Labour Court,
Union Territory, Chandigarh.
UID No. PB0152

Secretary Labour,
Chandigarh Administration.

CHANGE OF NAME

I, Vinod Kumar, S/o Prem Parkash, # 17, Police Colony, Sector 39, Chandigarh, have changed the name of my minor son from Mayank to Mayank Tanwar.

[1270-1]

I, Vinod Kumar, S/o Prem Parkash, # 17, Police Colony, Sector 39, Chandigarh, have changed the name of my minor son from Deepanshu to Deepanshu Tanwar.

[1271-1]

I, Manjit Kaur, W/o Bhupinder Singh, R/o # 1171, Sector 18-C, Chandigarh, have changed my name to Manjit Kaur Heera.

[1272-1]

I, Bhupinder Singh, S/o Late Sh. Piara Singh, R/o # 1171, Sector 18-C, Chandigarh, have changed my name to Bhupinder Singh Heera.

[1273-1]

I, Hemant Aggarwal, S/o Sh. Mahesh Rai Aggarwal, R/o H. No. 1571, Sector 38-B, Chandigarh, have changed my daughter's name from Saira Aggarwal to Sairaah Aggarwal.

[1274-1]

I, Hemant Aggarwal, S/o Sh. Mahesh Rai Aggarwal, R/o H. No. 1571, Sector 38-B, Chandigarh, have changed my son's name from Siddharth Aggarwal to Sidarrtha Aggarwal.

[1275-1]

मैं, सुख देवी, पत्नी स्वीगय रोशन लाल, निवासी # 1344, विकास नगर, मौली जागरां, चंडीगढ़, घोषणा करती हूँ कि मैंने अपना नाम सुख देवी से बदलकर शांति देवी रख लिया है।

[1276-1]

I, Kanwar Deep Singh, S/o Sh. Surinder Paul Singh, House No. 2617, Sector 37-C, Chandigarh, have changed my name from Kanwar Deep Singh to Kanwar.

[1277-1]

मैं, रामतीर्थ पाल, सपुत्र राम दुलार, निवासी मकाव नंबर 2547बी, राम दरबार, चण्डीगढ़, ने अपना नाम रामतीर्थ पाल से बदलकर पृथ्वी पाल कर लिया है।

[1278-1]

I, Arti Devi, W/o Shri Vishnu, R/o # 356, 3rd Floor, Sector 52, Chandigarh, have changed my minor daughter's name from Baishnvi to Vashnavi.

[1279-1]

I, Ashwani Kumar, S/o M.P. Verma, # 481, New Indira Colony, Manimajra, Chandigarh, have changed my name to Ashwani Verma.

[1280-1]

I, Manu Gupta, W/o Amit Garg, R/o H. No. 1393, Sector 40-B, Chandigarh, have changed my name from Muskan Garg to Manu Gupta.

[1281-1]

I, Susruta Menon, S/o Sh. Manjeet Pal, # 3387/1, Sector 47-D, Chandigarh,. I have changed my name from Susruta Menon to Susruta Pal Singh Menon. For all future purposes.

[1282-1]

I, Smriti Duggal, D/o Sudhir Kumar Nayyar, R/o # 652, Sector 16-D, Chandigarh, have changed my name from Smriti Duggal to Smriti Nayyar. Concerned note.

[1283-1]

I, Santo Devi, W/o Mohinder Singh, # 732/27, Sector-26, Chandigarh, have changed my name to Satto Devi.

[1284-1]

I, Shiv Kumar, S/o Satpal Kumar, # 3103, Sector 19-D, Chandigarh, have changed my minor son's name from Aarav to Ryan.

[1285-1]

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